provision of facilities-based, circuit-switched local telephony. As the Commission recognized in *AT&T-TCI*, the best prospect for bringing effective competition to local exchange service areas in the near future is through combinations of complementary assets by emerging entrants into previously foreclosed markets.[10]

For the same reasons that it found that AT&T's acquisition of TCI was pro-competitive and served the public interest, the Commission also should find that the Merger of AT&T and MediaOne is pro-competitive and serves the public interest. Because of the complementary nature of AT&T's and MediaOne's assets, the combined entity will be able to provide an alternative to the dominant ILECs' services for residential customers far more quickly and effectively than either entity could separately. The combination of AT&T and MediaOne will foster competition in local telephony almost immediately in some service areas, where MediaOne's ongoing upgrade of its cable facilities to provide for telephony can be immediately combined with AT&T's superior brand, engineering and network management experience, customer care, as well as scale economies, to provide for competition that simply does not exist today. In other MediaOne service areas, AT&T's capital and telephony experience will expedite the construction and deployment of competitive facilities-based local telephony. The scale and clustering economies that will accompany the combination of the assets of AT&T and MediaOne will create a stronger competitor to ILECs that have the advantage of enormous geographic reach, clustering and home penetration at levels that neither MediaOne nor AT&T could achieve absent the Merger.[11]

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[10] *Id.*

[11] Even with the Merger, AT&T-MediaOne cannot achieve the same levels of clustering and home penetration as the largest ILECs.

The Merger will provide these benefits, as well as other benefits in the video and Internet access services described below, without diminishing competition in the provision of any services, given the complementary, rather than competing, nature of the assets of AT&T and MediaOne. AT&T and MediaOne do not serve the same geographic service areas except in a few insignificant instances of overlap, and the Merger therefore will not eliminate current or probable future competitors. Given the combined market shares of AT&T and MediaOne, the Merger also will not significantly increase concentration in any telephony, video or Internet service. Nor will the Merger give AT&T the ability or the incentive either to exercise monopsony power in video programming or to foreclose access to cable programmers that sell programming in competition with the programming provided by Liberty Media Group, which is independently managed and controlled by the holders of a separate tracking stock within AT&T. Rather, AT&T will have an even greater incentive to provide consumers access to the largest amount of programming possible in order to maximize the value of its cable assets.

For these reasons, the Merger is in the public interest and the applications for consent to the transfer of control of MediaOne's licenses to AT&T should be granted.

II. DESCRIPTION OF THE TRANSACTION

A. The Merger

MediaOne will be merged into Merger Sub, a wholly-owned subsidiary of AT&T, and will no longer exist as a separate entity. MediaOne's shareholders will have the option to convert their shares into cash, shares in AT&T or a combination of both, based on the shareholder's election.[12]

B. The Merger Parties

AT&T - Telephony. AT&T provides domestic and international long distance telephone services to residential, business, and government customers in the United States and to more than 250 countries and territories around the world. AT&T also provides other communications services, including local telephone, wireless, and Internet access services. AT&T's 1998 communications services revenues were $53.2 billion.[13] In 1998, AT&T earned $22.9 billion in revenue from its business services, $22.6 billion from its consumer services and $5.4 billion from its wireless services.[14]

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[12] Shortly before entering into the Agreement, AT&T also entered into a Letter Agreement with Comcast Corporation ("Comcast"), which contemplates an exchange between AT&T and Comcast of certain cable television systems ("Comcast Exchange"). Upon the consummation of the Merger and the fulfillment of certain other conditions, Comcast will transfer to AT&T cable systems in Ft. Lauderdale and Davie, Florida; Sacramento, California; Chesterfield, Virginia; Chamblee, Georgia; Chicago, Illinois; Westmoreland, Pennsylvania; and the State of Colorado. AT&T will transfer to Comcast cable systems in Naples and Ft. Myers, Florida; Detroit, Michigan; Washington, D.C.; Baltimore and Ocean City, Maryland; the State of New Mexico; Philadelphia, Pennsylvania; and other systems in Michigan or in Nashville, Tennessee. In addition, AT&T currently owns 50 percent of the equity of Lenfest Communications, Inc. and has entered into an agreement to purchase the remaining 50 percent. Subject to certain conditions, Comcast will manage the cable television systems owned or controlled by Lenfest for ten years following AT&T's acquisition of the remainder of Lenfest. Applications for the FCC's consent to the transfers associated with these transactions will be presented in separate filings.

[13] 1998 AT&T Annual Report at 32.

[14] *Id.*

AT&T currently provides local telephone service – local exchange and exchange access services – on a limited basis.[15] At the time of its acquisition of TCI, AT&T offered resold local exchange service to less than one-half of one percent of its total residential customers.[16] At the present time, AT&T resells local exchange service to approximately 220,000 customers in seven states.[17] Although AT&T's revenues from all local telephone services increased, from $562 million in 1997 to $974 million in 1998,[18] revenues from local telephone service continue to comprise only a very small percentage of AT&T's total revenues and of total industry revenues in those markets.[19]

In July 1998, AT&T acquired Teleport, primarily to expand its offering of local exchange and exchange access services for business customers.[20] AT&T and Teleport together accounted for only 0.8 percent of 1997 local exchange and exchange access service revenues for large business customers.[21]

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[15] *See AT&T-TCI* ¶ 3; *AT&T-Teleport* ¶ 4.

[16] *AT&T-TCI* ¶ 3 & n.7 (AT&T resold local telephony to approximately 325,000 customers).

[17] These states include California, Connecticut, Georgia, Illinois, Michigan, New York, and Texas.

[18] 1998 AT&T Annual Report at 42.

[19] AT&T's efforts to compete in the provision of local exchange and exchange access service through resale of ILEC service, interconnection to ILEC facilities, and construction of its own facilities (ADL and SONET Ring), are now a matter of a well-documented record before the Commission. *See generally AT&T-TCI*; *AT&T-Teleport*.

[20] *AT&T-Teleport* ¶ 8.

[21] *Id.* ¶ 36. In addition, Teleport had only a minuscule share of the local exchange and exchange access service residential and small business revenues. *Id.* ¶ 33. At the time of the merger, Teleport operated in 83 cities in the United States, including 29 of the largest 30, providing local exchange and exchange access services primarily to business customers in urban areas and to a relatively small number of residents in multiple dwelling units in high-density areas. *Id.* ¶ 5.

In March 1999, a subsidiary of AT&T merged with TCI, and AT&T became the parent company of TCI. The merger enabled AT&T to integrate its telecommunications business with TCI's cable networks and thereby begin to build facilities-based local residential telecommunications networks where TCI operated cable systems. At the time of the merger, TCI was primarily a cable company, but was engaging in limited tests of local exchange service in San Jose, California; Dallas, Texas; Hartford, Connecticut; and Arlington Heights, Illinois.[22] AT&T has proceeded to upgrade TCI's cable network and deploy local telephony facilities, and already has begun providing facilities-based local exchange telephone service in Fremont, California.[23]

AT&T also provides wireless telephone services through its ownership and operation of AT&T Wireless Services Inc. ("AT&T Wireless").[24] AT&T Wireless operates and holds interests in commercial mobile radio service ("CMRS") systems in 26 of the 30 largest service areas in the United States. In 1998, AT&T Wireless generated revenues of approximately $5.4 billion from a wireless customer base of 9.7 million.[25]

AT&T – Cable Television Systems and Video Programming. AT&T, through its subsidiary TCI, delivers a wide range of video products, including local broadcast stations;

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[22] TCI had announced plans to sell its operations in Hartford, where the majority of its local residential business was located, to Cablevision Systems Corporation.

[23] *See AT&T-TCI* ¶ 148. The initiation of telephone service to residential customers in Fremont is part of a plan to initiate service in 10 areas in the near future.

[24] *Id.* ¶ 4.

[25] 1998 AT&T Annual Report at 32. In addition, AT&T has placed into a trust arrangement, pending sale over a period of time approved by the Commission and the Department of Justice, approximately 23.8 percent of the outstanding shares of Sprint PCS Tracking Stock. *See AT&T-TCI* ¶ 107.

national, regional, and local cable programming services; premium movie and pay-per-view services; and sports programming services to homes and businesses nationwide. AT&T generally divides its interests in cable systems into three categories: owned and operated systems (in which AT&T is the 100 percent owner); consolidated systems (in which AT&T has a greater than 50 percent, but less than 100 percent, interest, and which are consolidated for financial reporting purposes); and non-consolidated systems (in which AT&T has a 50 percent or less interest). A detailed list of these interests, along with the approximate number of cable homes passed and subscribers served, is contained in Appendix A.

Through its indirect 100 percent ownership of the outstanding capital stock of Liberty Media Corporation ("LMC") and several other corporations, AT&T also holds an interest in Liberty Media Group ("Liberty"). LMC and its subsidiaries own assets representing substantially all the assets attributed to Liberty. Liberty has an interest in the following video programming providers: Discovery Communications, Inc., USA Networks, Telemundo Network, Telemundo Station Group, BET Holdings II, Inc., Fox Sports World, Fox Sports World Español, Fox Sports South, Fox/Liberty Networks LLC,[26] QVC, Inc., Regional Programming Partners, Canales ñ, Court TV, MacNeil/Lehrer Productions, TV Guide, Inc., E! Entertainment Television, Style, Odyssey, International Channel, Sunshine Network, and Encore Media Group. Further, Liberty owns a series of common stock representing approximately nine percent or less of the common stock (but less than one percent of the voting power) of Time

[26] In a pending transaction, Liberty will divest its interest in Fox/Liberty Networks (which owns interests in various regional sports and fX, a regional cable television network) in exchange for non-voting American Depository Receipts of News Corporation.

Warner Inc., which owns 74.49 percent of Time Warner Entertainment ("TWE").[27] Liberty also owns interests in a number of foreign programming service providers, including Flextech p.l.c. (UK), Jupiter Programming Co., Ltd. (Japan), MultiThematiques, S.A. (France, Italy, Spain, Poland, Germany), Pramer S.C.A. (Argentina), The Premium Movie Partnership (Australia), and Torneos y Competencias, S.A. (Argentina).

AT&T has issued two classes of separate tracking stocks, Liberty Group A and Liberty Group B, that track the performance of Liberty. The Liberty Group tracking stocks are held by separate public shareholders, and no part of the ownership of Liberty is reflected in AT&T common stock. The Liberty tracking stocks are held by shareholders that held TCI-Liberty tracking stock or TCI Ventures tracking stock prior to the merger of AT&T and TCI, and others that have purchased these publicly-traded shares subsequent to that merger. AT&T indirectly owns 100 percent of the outstanding capital stock of LMC, which, in turn, owns substantially all of the assets of Liberty. However, as a matter of AT&T's publicly disclosed Board policy, all dividends and distributions of Liberty must be passed through to the Liberty tracking stock shareholders by AT&T. Moreover, because the value of Liberty's assets are represented by the value of the Liberty tracking shares, any appreciation in the value of Liberty or its assets will be reaped by the Liberty tracking stock shareholders, not by the holders of regular AT&T common stock. Thus, although AT&T as a legal corporate matter "owns" the assets of Liberty, the regular AT&T common shareholders have no "economic interest" – *i.e.*, the

[27] The Commission has held that Liberty's ownership of Time Warner stock is non-attributable for purposes of the cable ownership rules. *See* Memorandum Op. and Order, *Applications of Turner Broadcasting System and Time Warner for Consent to Transfer of Control*, 11 FCC Rcd. 19595, ¶¶ 17-19 (1995).

right to participate in the profits and losses of Liberty as a going concern – in Liberty. Instead, the economic interest is held by the Liberty tracking stock shareholders.[28]

Similarly, the operation of Liberty's programming assets is conducted separately by Liberty's current management. A majority of LMC's board will be individuals who were on the LMC board prior to the AT&T-TCI merger (or will be selected by pre-merger incumbent directors) for seven years following the AT&T-TCI merger. The LMC officers and Board of Directors decide Liberty's course autonomously.[29] Liberty and AT&T can compete with each other in their lines of business and have no obligation to provide financial support, share corporate opportunities, or otherwise assist each other. Liberty has control over its financing capability and other corporate matters, and AT&T may not "unwind" its ownership of Liberty except by a spin-off to the Liberty tracking stock shareholders.[30] In sum, only Liberty's tracking

[28] Many of the structural safeguards and infrastructure features that establish Liberty's economic independence have been included in the final judgment entered into with the Department of Justice in connection with the merger of AT&T and TCI (and therefore carry the imprimatur of law).

[29] The only exceptions to this rule are (1) in the context of disputes under the Inter-Group Agreement between AT&T and Liberty, which is governed by the contractual terms of the agreement, and (2) those limited matters that require action at the AT&T Board or committee level, such as the issuance of additional Liberty tracking shares. The scope of the Inter-Group Agreement is limited: The overall purpose of the Inter-Group Agreement is to provide that, to the extent possible (given that Liberty is owned, as a legal and tax matter, directly or indirectly by AT&T), the AT&T Common Stock Group and Liberty shall have no obligations or responsibilities to one another to provide financial support, to offer corporate opportunities, or otherwise to assist one another, except as set forth in the Inter-Group Agreement or in a separate "Intercompany Agreement" (which sets forth, among other things, a supply relationship between Liberty and the AT&T Common Stock Group as to programming services).

[30] For example, AT&T cannot increase the authorized number of shares of Liberty Group tracking stock or dispose of the Liberty Group's underlying assets without the consent of the Liberty Group tracking stockholders, and the proceeds of any issuance of Liberty tracking stock generally must be invested in the Liberty Group. LMC also has the unilateral right to authorize and issue new common and preferred stock, within specified limits.

shareholders have an economic interest in Liberty's programming investments and only Liberty's management has the right to direct the operation of those investments.[31]

AT&T, through TCI, also owns a non-controlling 33 percent equity interest in Cablevision Systems Corp. ("Cablevision"). By virtue of its interest in Cablevision, TCI has an indirect interest in Rainbow Media Sports Holdings, Inc. ("Rainbow"). Cablevision owns 75 percent of Rainbow,[32] which owns American Movie Classics, Romance Classics, Bravo, Bravo International, The Independent Film Channel, AMC Music Pop, MuchMusic and News 12 Network. Rainbow also owns 50 percent of National Sports Partners ("Fox Sports Net") and 60 percent of Regional Programming Partners, which owns several regional sports networks. TCI holds only Class A stock in Cablevision, each share of which has only 1/10th of the voting power of the Class B stock. TCI's voting interest in Cablevision is only approximately 8.9 percent. Although AT&T has the right to nominate two Cablevision directors, there are a total of 15 directors on the board, and a majority of the directors are elected by members of the Dolan family, or by trusts in favor of members of the Dolan family. Thus, Cablevison, not AT&T, controls the Rainbow programming services.

AT&T also owns a 50 percent interest in two cable partnerships with Time Warner Cable – Kansas City Cable Partners and Texas Cable Partners, L.P. Each of the partnerships has a management committee with six members, three appointed by Time Warner Cable and three by AT&T. However, Time Warner Cable is the general manager of the cable

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[31] Liberty also owns a 13 percent interest in General Instrument Corp ("GI"). As described above, Liberty is an operationally and economically distinct entity from AT&T. Therefore, AT&T effectively has no economic interest in, or right to direct the operations of, GI.

[32] NBC Cable owns the other 25 percent of Rainbow.

systems, with sole and exclusive responsibility for the day-to-day management and operations of those systems. Time Warner Cable has the right to take any actions it deems necessary or advisable on day-to-day activities, without obtaining the prior approval of the management committee. AT&T does not purchase programming or control programming decisions on behalf of the partnership systems. Rather, Time Warner Cable makes all programming decisions, subject only to compliance with the following specific requirements: it may not unreasonably favor Time Warner-affiliated programming over similar programming affiliated with AT&T; it must obtain AT&T's consent prior to deleting AT&T-affiliated programming; and, because of commitments made prior to the formation of the partnership, the partnership is required to carry American Sports Classics, Home Shopping Network, MSNBC, Romance Classics, The Box, and Web TV on the systems contributed by AT&T as soon as practicable. Thus, although Time Warner Cable may not unilaterally disrupt the carriage of certain existing programming on partnership systems, and although Time Warner Cable must add certain minimal program services to systems contributed by AT&T when practicable, AT&T has no ability to cause the partnerships to refuse to carry any particular programming service.

AT&T - Internet. AT&T began service as an Internet service provider in 1995, and began offering consumer dial-up access in early 1996 through the AT&T WorldNet Service ("AT&T WorldNet"). AT&T WorldNet, which currently has about 1.8 million customers,[33] focuses on providing Internet access to consumers. Although most consumers access WorldNet

[33] With its acquisition of the IBM Global Network ("IGN"), AT&T also obtained less than 300,000 additional non-corporate billed Internet subscribers in the United States. This number includes customers of other Internet access providers that use the IGN network to provide Internet access to their customers. For purposes of this Public Interest statement, AT&T has included all of these IGN-based customers in its WorldNet figures.

on a dial-up basis, connectivity is also available via Frame Relay or private line, at speeds ranging from 56 Kbps to 45 Mbps.

In its merger with TCI, AT&T acquired an interest in At Home Corporation ("@Home"), a Silicon Valley start-up founded in 1995, which provides content-enriched Internet access service over the cable television infrastructure.[34] AT&T offers the @Home service to its subscribers. The @Home service allows subscribers to connect their personal computers via cable modems to a new high-speed network developed and managed by @Home. Subscribers obtain access to the public Internet and to other online content, including content developed by @Home's @Media group, which aggregates content, sells advertising and provides premium services to @Home subscribers. @Home services were purchased by approximately 326,000 subscribers (including 74,000 AT&T customers) in the United States as of June 1999. AT&T holds a 25.9 percent equity interest and a 57.0 percent voting interest in @Home.[35]

MediaOne. MediaOne has operations and investments in two principal areas: domestic broadband cable communications and international broadband and wireless communications. MediaOne's combined revenues for 1998, both domestic and international, were approximately $7.1 billion.[36]

At the end of 1998, as described more fully below, MediaOne's domestic cable television systems passed approximately 8.5 million homes and provided service to

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[34] On May 28, 1999, @Home merged with Excite, Inc. The newly merged company is now called Excite@Home.

[35] Other entities holding an interest in @Home include Comcast Corp., Cox Communications, Inc., Cablevision Systems Corp., Kleiner Perkins Caufield & Byers, and Shaw Cablesystems Ltd.

[36] 1998 MediaOne Annual Report at 20.

approximately 4.97 million subscribers.[37] Over the past four years, MediaOne has invested about $4.1 billion in upgrading its traditional, one-way, analog cable plant to two-way, digital, high capacity broadband facilities. This upgrade is complete in about half of MediaOne's service areas. In 1998 and early 1999, MediaOne began offering facilities-based local telephone service to residential customers in seven metropolitan areas, beginning in Atlanta, Georgia and continuing to Los Angeles, California; Jacksonville and Pompano, Florida; Boston, Massachusetts; Detroit, Michigan; and Richmond, Virginia.[38] Despite these efforts, MediaOne's overall penetration rate for residential telephony service in the territories that it serves is less than 3 percent of the homes that it has upgraded to provide cable telephony. Currently, MediaOne has slightly more than 26,000 local telephony customers.[39]

MediaOne is not a competitive provider of long distance or international telecommunications services. Moreover, on April 6, 1998, MediaOne merged its domestic wireless mobile telephone businesses with AirTouch Communications, Inc. ("AirTouch").[40]

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[37] 1998 MediaOne 10-K at 1-2. MediaOne's interests in international broadband service providers passed approximately 2.6 million homes and provided service to approximately 993,000 subscribers. Among its international broadband interests, MediaOne holds a 29.9 percent interest in Telewest Communications plc, which provides cable and telecommunications services in the United Kingdom.

[38] 1998 MediaOne 10-K at 19.

[39] MediaOne also holds a 19 percent interest in Time Warner Telephone ("TWT"), a CLEC that provides local exchange and exchange access service, primarily to large business customers in urban areas. TWT serves approximately 20 cities, including four cities in New York (New York City, Albany, Binghamton and Rochester); three cities in North Carolina (Raleigh, Charlotte, and Greensboro); four cities in Texas (Dallas, Austin, San Antonio and Houston); two cities in Florida (Tampa and Orlando); two cities in Ohio (Cincinnati and Columbus); and San Diego, California; Memphis, Tennessee; Jersey City, New Jersey; Milwaukee, Wisconsin; Indianapolis, Indiana; and Honolulu, Hawaii. <www.twtelecom.com/TimeWarnerCities>.

[40] *See* 1998 MediaOne 10-K at 19.

This included MediaOne's 2.6 million domestic cellular communications customers, as well as its 25 percent interest in PrimeCo Personal Communications, L.P.[41] In exchange, MediaOne received a passive stock interest in AirTouch. AirTouch was acquired by Vodafone Group, PLC ("Vodafone"), on June 30, 1999, pursuant to the Wireless Telecommunications Bureau's Order released on June 22, 1999 consenting to the proposed transaction.[42] Through the consummation of Vodafone's acquisition of AirTouch, MediaOne's interest in AirTouch's mobile telephony business has been reduced to an interest in Vodafone of approximately 4.9 percent.

MediaOne - Cable Television Systems and Video Programming. MediaOne delivers a wide range of video products to homes and businesses, including: local broadcast stations; national, regional, and local cable programming services; premium movie and pay-per-view services; and sports programming services. As noted above, MediaOne's cable systems pass approximately 8.5 million homes and serve approximately 4.97 million subscribers. A list of these interests is contained in Appendix B.

In addition, MediaOne has a 25.51 percent interest in TWE, which provides cable service through cable systems that pass approximately 17.9 million homes and serve approximately 11.2 million subscribers nationwide. The remaining 74.49 percent interest in TWE is held by Time Warner, Inc. After the Merger, AT&T will have no right or ability to participate in the management of the TWE cable systems, including programming decisions

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[41] *Id.* at 15.

[42] *See* Memorandum Op. and Order, *In re Applications of AirTouch Communications, Inc., Transferor, and Vodafone Group, PLC, Transferee, for Consent to Transfer Control of Licenses and Authorizations,* DA 99-1200 (FCC June 22, 1999) ("*AirTouch-Vodafone*").

made with regard to those systems.[43] The TWE cable systems are managed on a day-to-day basis by Time Warner Cable. Time Warner Cable makes programming decisions for the partnership systems, subject to the direction of the TWE Cable Management Committee. Following the Merger, AT&T will not have *any* representation on the TWE Cable Management Committee.[44]

MediaOne also holds interests in the following programming services: Food Network, Sunshine Network, Music Choice, E! Entertainment, Viewers Choice, Speedvision, Outdoor Life, in which MediaOne holds minority interests, and New England Cable News and Fox Sports New England, in each of which MediaOne holds a 50% interest. MediaOne does not manage or have affirmative control over any of these programming services.

MediaOne - Internet. Media One holds an approximate 34.67 percent interest in an Internet joint venture, Road Runner,[45] that was formed in 1998. MediaOne offers the Road

[43] MediaOne also holds an indirect 25.51 percent interest in HBO, Cinemax, and WB Network, and a 12.5 percent interest in Comedy Central and Court TV, each through its minority interest in TWE. As described below, MediaOne does not control TWE's programming operations.

[44] AT&T will have the right to appoint two of six TWE Board members. However, regarding the operation of the cable systems, the TWE Board is subject to the authority of the TWE Cable Management Committee, in which AT&T will not have any participation. Thus, AT&T's appointment of these Board members will not give AT&T the ability to control programming choices for the TWE systems.

[45] The Road Runner joint venture is operated by ServiceCo LLC ("ServiceCo"), which is owned by MediaOne, Time Warner, Inc. and its affiliates ("TWI"), Time Warner Entertainment-Cable ("TWE-Cable"), the Time Warner Entertainment-Advance/Newhouse Partnership ("TWE-A/N"), Compaq, and Microsoft. Compaq and Microsoft each hold a 10 percent interest in ServiceCo. The remaining 80 percent interest of ServiceCo is owned by MediaOne, TWI, TWE-Cable, and TWE-A/N through Cable HoldCo, a limited liability corporation. The ownership of Cable HoldCo is as follows: MediaOne has a 31.38 percent interest, TWI has a 10.70 percent interest, TWE-Cable has a 24.99 percent interest and TWE-A/N has a 32.93 percent interest. MediaOne's interest in ServiceCo (including proportionate share of interests held by TWE and TWE-A/N) is 34.67 percent.

Runner service to its subscribers. The Road Runner service is a digital, two-way interactive offering that includes broadband connectivity between a cable operator and a subscriber, access to the Internet, interactive content and programming, menus, navigational aids, electronic mail, access to newsgroups, a web browser, hosting, and other enhancements. As of April 1999, approximately 250,000 consumers (including approximately 125,000 MediaOne customers) purchased Road Runner services.

III. MERGER STANDARDS

As detailed below, the Merger will combine AT&T's strong brand and telecommunications expertise with MediaOne's "last mile" cable facilities, thereby expanding and accelerating the merged entity's ability to compete with incumbent LECs in providing local telephone services to residential customers. The Merger also will increase consumers' access to a wide array of packaged and *a la carte* services – including video and content-enriched high-speed Internet access.

In assessing the competitive effects of a proposed merger, the Commission now employs the same basic analytical framework articulated in *Bell Atlantic-NYNEX* and developed in subsequent Commission orders.[46] This framework includes an assessment of merger-specific

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[46] *See AT&T-TCI* ¶¶ 13-16; Memorandum Op. and Order, *Application of WorldCom, Inc. and MCI Communications Corp. for Transfer of Control of MCI Communications Corp. to WorldCom, Inc.*, CC Docket No. 97-211, ¶¶ 15-22 (FCC Sep. 14, 1998) ("*MCI-WorldCom*"); *AT&T-Teleport* ¶¶ 14-19; Memorandum Op. and Order, *MCI Communications Corp. and British Telecommunications PLC*, 12 FCC Rcd. 15351, ¶¶ 28-30 (1997) ("*BT-MCI*"); Memorandum Op. and Order, *In the Application of NYNEX Corp., Transferor, and Bell Atlantic Corp., Transferee, for Consent to Transfer Control of NYNEX Corp. and its Subsidiaries*, 12 FCC Rcd. 19985, ¶¶ 37-48 (1997) ("*Bell Atlantic-NYNEX*"). AT&T and MediaOne do not believe that it is necessary for the Commission, in determining whether this Merger is in the public interest, to conduct the searching competitive effects inquiry that the Commission first

(Continued . . .)

efficiencies that result in benefits to consumers and a competitive analysis that involves identifying the significant competitors (actual and potential) and evaluating probable competitive effects in each relevant market.[47] More specifically, the Commission considers general public interest benefits that will result from a proposed merger, including, among other things, the procompetitive effect that the merger will have on the quality and price of services provided to the public. The Commission then seeks to determine whether the merger will reduce competition either by enabling the combined entity to achieve unilateral market power or by reducing the number of competitors in any relevant market to a number that facilitates the competitors' collective exercise of market power through coordinated interaction. The Commission also seeks to determine if a proposed merger will be procompetitive, by enabling a competitor more quickly or efficiently to compete with a dominant firm or to serve as a stronger maverick in preventing coordinated interaction in furtherance of the collective exercise of market power.[48] Ultimately, the Commission weighs the probable benefits of the merger against potential harms to determine whether, balancing both competitive and general public interest concerns, the proposed merger would promote the public interest.[49]

(. . . Continued)

employed in *Bell Atlantic-NYNEX* in assessing a proposed merger of two incumbent local telephone monopolists. Nevertheless, AT&T and MediaOne have provided the *Bell Atlantic-NYNEX* analysis that supports the grant of the Applications.

[47] *Bell Atlantic-NYNEX* ¶¶ 37.

[48] *See id.* ¶¶ 37-61; *BT-MCI* ¶¶ 33-52; *AT&T-Teleport* ¶¶ 11-19; *AT&T-TCI* ¶ 16.

[49] *Bell Atlantic-NYNEX* ¶ 2.

IV. THIS MERGER WILL PRODUCE SUBSTANTIAL PROCOMPETITIVE BENEFITS THAT OUTWEIGH ANY CONCEIVABLE HARMS

A. The Merger Will Produce Benefits In The Provision Of Telephone, Internet And Cable Service

The Merger of AT&T and MediaOne will provide substantial procompetitive benefits and will serve the public interest. Like the Commission, AT&T is committed to ensuring that residential local exchange competition becomes a reality sooner rather than later.[50] In pursuit of that goal, AT&T has taken substantial risks in order to make local telephone competition a reality. AT&T has invested tens of billions of dollars of shareholder assets to acquire TCI and modernize its cable network in order to provide residential consumers with local exchange and exchange access services. AT&T's merger with MediaOne will expand and accelerate these efforts, bringing choice and the benefits of competition to millions more local telephone consumers.

This Merger, like the AT&T-TCI merger, also will "create greater customer choice among video- and content-enriched high-speed Internet access services."[51] Indeed, as discussed in detail below, AT&T's cable investments are *already* stimulating incumbent providers to offer new services and products to satisfy consumer demand that has long been ignored.

Telephony. More than three years after its passage, the competitive promises of the 1996 Act remain largely unfulfilled. Although competition for the largest business customers

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[50] *See AT&T-TCI* ¶ 48.

[51] *Id.* ¶ 147.

is beginning to develop in some urban areas, mass market residential and small business local exchange competition is virtually non-existent.[52] The reasons for this are obvious. The regulatory mechanisms intended by Congress to facilitate immediate local competition have either proven uneconomic (in the case of total services resale) or have been foreclosed by the ILECs' continued abuse of their bottleneck networks (in the case of access to unbundled network elements).[53]

There thus can be no question about the enormous public interest benefits of bringing local exchange competition to consumers who currently have no alternative to their incumbent local telephone provider.[54] It is likewise clear that cable telephony is the only short term prospect for broad scale local competition at the mass market level.[55] The AT&T-MediaOne transaction will accelerate the deployment of cable telephony, make cable telephony more competitive with incumbent services, and bring alternative choices to even more consumers.

First and foremost, just as the Commission found with respect to the combination of AT&T and TCI, the Merger advances the public interest because it combines two firms with complementary assets. "AT&T is one of only a few firms that currently possesses the

[52] *Id.* ¶¶ 46, 146-47; *AT&T-Teleport* ¶ 46.

[53] Only 1.5 percent of ILEC switched lines were resold by competitive local exchange carriers ("CLECs"), while less than one percent of large ILEC lines have been provided as unbundled network elements, with ILECs in 12 states providing *no* unbundled loops to competitors. Trends in Telephone Service, at 9-2, 9-3 (CCB Feb. 1999) ("*1999 Trends*").

[54] *AT&T-TCI* ¶ 146.

[55] *Accord, id.* ¶ 48.

experience, brand name assets, and financial resources that are essential for quick and substantial entry into the retail residential local exchange and exchange access markets."[56] Likewise, the Commission has recognized that while cable companies possess important "last mile" assets, they "do not have the same kind of brand-name reputation and expertise with respect to telecommunications services" as AT&T.[57] Thus, by combining existing cable facilities with AT&T's strong telephony brand, sophisticated knowledge of marketing telephony services, and technical expertise in establishing and managing telephone networks, "the combined firm will be able to provide an alternative to the incumbent LECs' services for residential customers far more quickly and effectively than either could separately."[58]

The Merger will bring these same benefits to millions more consumers that AT&T cannot serve through TCI cable facilities. MediaOne has faced a number of obstacles in developing competitive local exchange telephony. Absent the Merger, these obstacles will continue to inhibit MediaOne's establishment as a viable competitor to ILECs. One such obstacle is MediaOne's lack of brand recognition and, accordingly, consumer confidence, as a provider of telecommunications services. MediaOne therefore will immediately benefit from AT&T's strong telephony brand. MediaOne's success in local telephony also has been hampered by its relative lack of telephone network management expertise, particularly as compared with its ILEC competitors. Additionally, MediaOne has not had access to the

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[56] *AT&T-TCI* ¶ 47.

[57] *Id.* ¶¶ 47-48.

[58] *Id.* ¶ 48.

telephone marketing and customer care service expertise maintained by most telephone companies, including its ILEC competitors and AT&T.[59]

Thus, although MediaOne has begun a roll-out of cable telephony, it has achieved only modest success. MediaOne today has only approximately 26,000 telephone customers, despite having invested approximately $4.1 billion to upgrade its system to provide additional services, including cable telephony.[60] In the areas where MediaOne has upgraded its broadband network, MediaOne is achieving a penetration level of less than 3 percent of the homes ready for its telephone service. Moreover, MediaOne has determined that, on its own, the company will be able, at best, to achieve only the most modest penetration levels in local telephone exchange and exchange access services in the next several years, and that it will not reach significant penetration for almost a decade.

The reasons for MediaOne's low telephony penetration and slow projected growth are straight-forward. Consumers are, understandably, reluctant to purchase basic telephone services from a company without an established reputation for providing reliable, high quality telephone service. As a new entrant, and a cable company, MediaOne has no established reputation as a reliable telephone service provider. For example, one recent national survey found that while 65 percent of consumers would consider switching to a long distance carrier for

[59] As with all CLECs, another significant obstacle to entering local telephony service has been MediaOne's dependency on the ILECs for essential elements of its service. MediaOne has encountered serious and extensive problems with the ILECs in the areas of interconnection, number portability, access to new telephone numbers, access to wiring in multiple dwelling units, and access to ancillary services, such as directory assistance, support services, repair, and intraLATA toll service.

[60] MediaOne projected completion of the upgrade of most of its local networks by the end of the year 2000.

local service, only 19 percent would use a cable company.[61] MediaOne's own internal analysis likewise has shown that consumers view telephone companies in general, and AT&T in particular, as having a greater reputation for quality and service.

AT&T's established telephony brand will improve both the overall penetration level that can be achieved by MediaOne and shorten the time period in which that level can be achieved. In a recent assessment of telecommunication brand images, IDC/LINK reported that "AT&T received the highest consumer confidence ratings nationwide" and consumers selected AT&T as the company that they were most likely to use as their primary provider of telecommunications services (including local, long distance, and wireless).[62]

In addition, providing facilities-based telephone service is a highly complex endeavor, requiring not only sophisticated engineering expertise, but also organizational structures that are capable of quickly responding to consumer demands. While MediaOne has begun to develop these skills and knowledge, there is much it can learn from AT&T. For example, MediaOne will gain the expertise AT&T has developed in managing today's sophisticated telephone networks, including the integration of local, long distance, and international networks along with the integration of circuit switched and packet switched networks. Similarly, MediaOne will have access to AT&T's highly sophisticated telephone marketing and customer care expertise and organizational structures.

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[61] "Alternatives for Phone Service," USA Today, at A1 (May 13, 1999).

[62] *Residential Telecommunications Brand Image Assessment 1998*, IDC/LINK Report (July 1998).

The Merger also will accelerate MediaOne's deployment of a new, more efficient architecture for providing cable telephony. Currently, MediaOne's cable telephony network employs a standard hybrid fiber coaxial cable ("HFC") architecture that uses circuit switching technology. Packet switching, using IP technology, promises to reduce substantially the costs of providing local telephone services because circuit switches hold dedicated circuits open (and thereby make scarce capacity unavailable) during the duration of a phone call even when there is no information being transmitted. By contrast, packet switches can route multiple calls through the same channel as well as route the same call through multiple channels. Moreover, IP telephony will make it easier to integrate voice grade traffic with data networks, thereby eliminating the need to have multiple, redundant networks for the separate services.

As AT&T explained in the TCI proceeding, while AT&T has begun deploying circuit switches in its existing cable network in certain cases to initiate service immediately, it intends to transition to a packet switched network as soon as possible. Indeed, AT&T is in the advanced stages of developing and testing the necessary equipment to provide IP telephony. Thus, the Merger will bring the significant benefits of IP telephony to consumers in MediaOne's territories much sooner than if MediaOne were to try to deploy this architecture on its own.

Finally, the Merger will increase the strength of MediaOne's competitive telephony offerings because MediaOne will be able to access AT&T's existing network infrastructure. Through its acquisition of Teleport, AT&T has local facilities in a number of the same cities MediaOne's cable facilities serve. With those facilities, AT&T is able to connect some of its customers directly to its long distance network and thereby avoid ILECs' exchange access facilities and access charges. Moreover, AT&T is able to use Teleport's assets to interconnect to incumbent networks at end offices rather than at tandem switches, thereby avoiding tandem switch and shared transport charges. In contrast, MediaOne has few transport facilities and must generally interconnect to incumbent networks through tandem switches (for both local exchange and exchange access calls). Hence, by enabling MediaOne to utilize AT&T's existing local infrastructure, the Merger will allow MediaOne to interconnect more efficiently to incumbent networks and thereby become a lower cost and more effective local competitor.

For its part, AT&T gains more from MediaOne than simply its last mile cable assets. Although AT&T's general telecommunications expertise will assist the speed and potency of MediaOne's cable telephony offering, MediaOne has developed a knowledge base that can be transferred to AT&T to enhance AT&T's ability to provide cable telephony on the TCI system. As discussed above, AT&T intends to upgrade TCI's facilities to provide IP-based cable telephony. However, in the interim, it will use the same circuit switching architecture that is currently being used by MediaOne. In fact, MediaOne already has upgraded about half of its systems to provide for the initiation of cable telephony and has started providing services in seven of its service areas. AT&T will benefit from MediaOne's experience in deploying these facilities and using them to provide local telephone service.

For example, HFC architecture requires all data and telephony users to share limited signal space through random allocation of space based on immediate demand. Moreover, there are significant differences (both in quantity and in variations) between upstream demand (traffic generated from the customer) and downstream demand (traffic carried to the customer). Ensuring that sufficient capacity exists in the network, while at the same time not investing in unnecessary capacity, is therefore a central issue in the management of cable telephone networks. With the Merger, AT&T will acquire the experience MediaOne has gained in managing bandwidth congestion on its network.

AT&T can also utilize existing MediaOne facilities to "jump start" cable telephony on neighboring TCI facilities. In several regions of the country, including the Miami-Fort Lauderdale area, MediaOne cable systems that have been upgraded to provide cable telephony adjoin TCI systems that are in the process of being upgraded. This means that AT&T can connect the distribution hubs in the TCI system to MediaOne's existing, upgraded headend offices. Not only does this mean that AT&T will achieve greater efficiencies because it will not have to duplicate the headend equipment – such as the local switch, DC power supply, and the routers and servers used to connect to the Internet – but it will also enhance AT&T's speed to market, thereby allowing it to bring the benefits of local competition even sooner.

Beyond increasing the speed and competitiveness of AT&T's cable telephony, the Merger will increase the geographic scope in which AT&T can offer local service. Although AT&T's purchase of TCI will bring local telephone choice to millions of residential consumers in several major markets, the TCI transaction only gave AT&T access to customers in those cities where TCI actually has cable facilities. By acquiring MediaOne, AT&T will gain *immediate* access – and the ability to provide competitive, facilities based local exchange services – to millions of consumers in service areas where it currently has no facilities and cannot provide competitive local telephony offerings.

Finally, the Merger will create economies in providing local exchange services in competition with ILECs. As AT&T demonstrated in the TCI proceeding, enormous investment is required to develop and deploy effective cable telephony facilities and services.[63] Deployment of cable telephony requires a large fixed investment in the development of engineering protocols and operating standards and practices; construction and furnishing of central offices, transport facilities and databases; hiring and training of installation and maintenance crews; and establishment and staffing of customer care centers. Similarly, the costs of marketing new services to residential consumers are substantial. The Merger will allow AT&T to spread such costs over a wider base.

In this regard, it is important to recognize the fundamental differences between ILECs and cable providers. Although completion of the Merger will give AT&T a "footprint" roughly the same size as an Ameritech-SBC-PacBell, AT&T for several reasons will begin with many *fewer* customers than such an ILEC. First, cable and telephone service have dramatically different penetration rates: on average, 94 percent for telephone and 65 percent for cable television. Thus, even when a cable company passes as many houses as a telephone company, it has almost 30 percent fewer customers. Second, as a new entrant into telephony, cable companies start with *no* telephone customers. Third, cable companies must expend enormous sums of money to research, develop and implement broad scale cable telephone networks while ILECs already have ubiquitous, working networks in place. Thus, to achieve the same economies of scale as, and to compete on an equal footing with, ILECs, cable companies must be permitted to achieve footprints as least as large, or larger, than these large ILECs.

Internet. Just as the Merger will provide economies of scale and scope that will allow the merged entity to provide competitive local telephone service more expeditiously than

[63] *See AT&T-TCI* ¶ 147.